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CF1124

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.

SECOND APPEAL NO. 49 OF 2004

SECOND APPEAL UNDER SECTION 100,

CODE OF CIVIL PROCEDURE, 1908

Appellants Plaintiffs : 1) Bodhan Prasad S/o Teekaram, aged about 69 years;

2) Yayati Prasad S/o Bodhan Prasad, aged about 32 years;

3) Omprakash S/o Bodhan Prasad ,aged about 30 years;

All cultivators, resident of village Bhurki ,

Tahsil Bemetara, District Durg (C.G.)

P. R. No. 9.2.04
Presented by shri Sanjay Agrawal
dated Adv.

Vs.

Respondent Defendant : State Of C.G.,

Through- Collector, Durg,

District Durg.

Claim in appeal for declaration of title,permanent Injunction and, for possession,

Valued at Rs. 1,100/-
Court Fee affixed, at Rs. 112/-

(As in Courts below)

RECEIVED COPY
19-1-04
Clerk to A G. Bilaspur

Being aggrieved by judgment and decree,dated 11.12.2003, In C.A.No.29-A/2003,passed by IInd Upper District Judge, (F.T.C.) Bemetara, Durg, arising out of judgment and decree, dated 14.1.1999,in C.S.No.12-A/1987,passed by civil judge class-1,Bemetara, District Durg, the plaintiffs this appeal, which involves the substantial questions of law on the following facts :

DRK

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HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 49 of 2004

Bodhan Prasad & Others

Versus

State of Chhattisgarh

Noted
9/10/05 (Bavinita Tulsyan)

ORDER

Post for 6 -09-2005

Sd/-
Sunil Kumar Sinha
Judge

5 -09-2005

(Vipprasen Agrawal)

(J.D Bajpayee)
Govt. Advocate

(30)

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 49 of 2004

Bodhan Prasad & Others

Versus

State of Chhattisgarh

Shri M.K. Bhaduri, counsel for the appellants.

ORDER
(6 -09-2005)

SUNIL KUMAR SINHA, J.

(1) The appellants/plaintiffs, who have lost in both the courts, have filed this second appeal being aggrieved with the judgment and decree date 11.12.2003 passed in Civil Appeal No. 29-A/2003 by the IInd Additional District Judge (F.T.C.) Bemetara, District, Durg, arising out of judgment and decree dated 14.1.1999 passed in Civil Suit No. 12-A/1987 by the Civil Judge, Class-I, Bemetara, District Durg (C.G.).

(2) The brief facts are that the plaintiffs had filed a suit for declaration that the order passed in Revenue (Ceiling) Case No. 167-169-B/90 (3) years 1975-76 on 22.6.1982 by the competent authority be declared void and inoperative against them. It was further prayed that the plaintiffs be declared the owners of the entire suit land, comprising of 19.95 acres except the land admeasuring 4.87 acres described in schedule- 'A' of the plaint. They further claimed permanent injunction restraining the defendant/State from distributing the surplus land to the other

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person, as declared by the aforesaid order, and have also prayed for return of possession of these lands.

(3) The case of the plaintiffs is that they are the joint owners of the suit lands. Plaintiff No.1, Bodhan Prasad is the *Karta* of the family. A proceedings under the M.P. Ceiling on Agriculture Holdings Act, 1960 (hereinafter referred to as the Act) was drawn against them by the Additional Commissioner, Raipur Division, Raipur vide the aforesaid ceiling case and the subject matter of the case was the entire property held by this family admeasuring 351 acres. An order dated 6.8.1976 was passed in this case and out of the aforementioned area of 351 acres, 69.80 acres were declared to be surplus and directed to be vested in the State. The plaintiffs filed an appeal against the said order before the Board of Revenue, Gwalior and by order dated 4.10.1978 passed by the Board of Revenue, the matter was remanded back to the Court of Additional Commissioner, Raipur. The Additional Commissioner, Raipur again heard the matter after the aforesaid remanded order and by order dated 9.11.1979 held that instead of 69.80 acres, 28.95 acres are the surplus lands and the same shall be vested in the State. Thereafter, objections were filed by the wife of the plaintiff No. 1 and the plaintiff No. 1 but the objections were rejected. Against this order of rejection, the plaintiff No. 1 again filed an appeal before the Board of Revenue and ultimately vide order dated 28.5.1981, the Board of Revenue again set aside the order passed by the Additional Commissioner and the matter was again remanded back to the Additional Commissioner, Raipur and thereafter the Additional Commissioner, Raipur passed an order dated 22.6.1982 and further reduced the quantity of surplus land of 28.95 acres to 19.95 acres excluding 9 acres land from them and ultimately, this 19.95 acres of land was declared as surplus land and was finally directed to be vested to the State for which a final publication was ordered. The plaintiffs filed this civil suit on the pretext that in fact, the order of the Additional Commissioner

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regarding declaration of 19.95 acres as surplus is not in accordance with law as there are many mistakes in the entries of Revenue records regarding areas of various Khasra number shown to be possessed by the family of the plaintiffs. Pointing out some errors in Revenue records, the plaintiffs claimed that in fact, instead of 19.95 acres land, the Additional Commissioner should have declared only 4.87 acres of land to be the surplus land for vesting with the State, therefore, the order passed by the Additional Commissioner on 22.6.1982 in Revenue (Ceiling) Case No. 167-169-B/90 (3) years1975-76 is incorrect and the same should be declared void and inoperative and the plaintiffs be declared the owners of the suit land of 19.95 acres excluding the land admeasuring 4.87 acres and after this declaration, possession of the land be handed over to them.

(4) The State filed its written statement denying the contentions of the plaintiffs. It was pleaded by them with the order dated 22.6.1982 is a valid order and is binding on the plaintiffs. The plaintiff No. 1 was *Karta* of the family and after considering the declaration filed by him in relation to land owned and possessed by the joint family, the land to be allotted to the shares of the members of the family was calculated and left out and thereafter only, the surplus land was declared by the competent authority. The publication of land so declared was made in accordance with law and the same has been vested with the State and the remaining land has been directed to be mutated on the names of the plaintiffs according to their entitlement.

(5) Learned trial Judge framed various issues in this case and after replying each issue, dismissed the suit of the plaintiffs holding that the order passed by the competent authority in the aforesaid Revenue (Ceiling) Case No. 167-169-B/90 (3) years1975-76 on 22.6.1982 is valid and is not based upon wrong description of areas of the lands mentioned in the revenue records, as has been pleaded by the plaintiffs. This order is

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operative and binding against the plaintiffs. It was further held that the land admeasuring 19.95 acres has been vested with the State by the aforesaid order and the plaintiffs' suit cannot be decreed.

(6) Against the aforesaid judgment and decree passed by the trial Court, the plaintiffs filed an appeal before the Lower Appellant Court in civil appeal No. 29-A/2003. The Lower Appellate Court after hearing the appeal, dismissed the same vide impugned judgment and decree dated 11.12.2003 and confirmed the judgment and decree passed by the trial Court. It is against this judgment and decree passed in first appeal, the plaintiffs have filed this second appeal under Section 100 of the C.P.C.

(7) At the argument learned counsel for the appellants submitted that the Courts below committed an error of law by holding that the order passed by the competent authority in the above ceiling case on 22.6.1982 was correct. He submitted that the findings in this regard are perverse.

(8) The trial Court (vide issue No. 1) and the first appellate Court have taken into consideration this important point as to whether the order passed by the competent authority in Revenue (Ceiling) Case No. 167-169-B/90 (3) years 1975-76 on 22.6.1982 was an order based upon the entries of mistaken/incorrect areas of various land owned by the plaintiffs, and the same is vitiated on this count. After due analysis both the Courts concurrently held that the order passed by the competent authority in the aforesaid Revenue (Ceiling) Case No. 167-169-B/90 (3) years1975-76 on 22.6.1982 was not based upon the entries of mistaken areas in the Revenue records and the same was binding over the plaintiffs. There is no reason for this Court to interfere with the concurrent findings recorded by the two Courts below, on this point, and there appears to be no merits in the

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second appeal of the plaintiffs on the ground of perversity of findings concurrently recorded by the two Courts below.

(9) Apart from the above, the first appellate Court has also dealt with the matter in light of the provisions of Section 46 of the M.P. (C.G.) Ceiling on Agriculture Holdings Act, 1960. Section 46 of the aforesaid Act reads as under:

> *"**46. Bar of jurisdiction of Civil Courts.** Save as expressly provided in this Act, no Civil Court shall have any jurisdiction- --*
>
> *(i) to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority; and*
>
> *(ii) to grant stay in any case under this Act"*

It has been held by the Lower Appellate Court that in fact, the civil jurisdiction over the matters like the present one was barred under the provisions of this Section and on this count also, the plaintiffs' suit was not maintainable before the civil Court.

(10) I have examined the matter on this line also. Section 46 of the Act creates a bar on jurisdiction of civil Courts. As stated above, it provides that no civil Courts shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority. Certainly, the grounds raised by the plaintiffs before the civil Court were the grounds covered under the provisions of this Section as the plaintiffs had taken the ground of wrong description of the areas of lands in the revenue records and the competent authority being wrongly decided this matter on the basis of those description. In fact, it was a matter within the exclusive dominion of the competent authority and by virtue of Section 46 of the Act, no civil Court was having jurisdiction to entertain a civil suit on the ground that the authority committed

an error of law in deciding the claim of a party raised by him on the aforesaid ground. The first appellate Court has rightly taken this view that the suit itself was not maintainable before the civil Court.

(11) Principally, even if a bar is created by a special statute, the civil Courts may entertain the civil suits under peculiar circumstances. The exception has been laid down by the old decision of the Privy Council, reported in the matter of ***Secretary of State -Vs.- Mask & Co, A.I.R. 1940 Privy Council, 105***. It laid down that the exclusion of civil jurisdiction must be explicitedly expressed or clearly implied. Even where it is so excluded, civil courts have jurisdiction to examine the cases where provision of Act are not complied or statutory tribunal does not act according to the fundamental principles of judicial procedure.

It has further been held by the Apex Court while dealing with a matter under the Madhya Bharat Abolition of Jagirs Act, where the civil jurisdiction was barred, that the order of Tehsildar could not be challenged in the civil courts except on the ground that it was a "nullity". ***(Please see A.I.R. 1979 SC, 1936 Raghunath (dead) by Lrs. -Vs.- Kanhiya (dead) by Lrs.)***

On no such incidents, the plaintiffs have challenged the validity of the order of the competent authority, then even otherwise also, the suit was not maintainable.

(12) A perusal of section 100 C.P.C. makes it clear that the scope and exercise of jurisdiction by the High Court in the second appeal under section 100 is limited to the substantial questions of law framed at the time of admission of the appeal or additional substantial questions of law framed at the later stage after recording reasons for the same. This makes it clear that the existence of substantial questions of law is sine qua non for the exercise of jurisdiction under the amended provisions of section 100 C.P.C. ***(Please see (2004) Vol. V SCC 762 –Thiagarajan and others –Vs- Sri Venugopala Swamy B. Koil and others).***

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As to which would constitute a substantial question of law, it has been observed by the Apex Court in case of ***Santosh Hazari – Vs- Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179*** that "A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law involved in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just an proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(Emphasis supplied)

(13) In the opinion of this Court, no substantial question of law is involved in the appeal. The appeal is dismissed at the motion stage. There shall be no orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge

vatti